

## **Title 15, California Code of Regulations**

### **Division 3, Adult Institutions, Programs and Parole**

#### **TEXT OF PROPOSED REGULATIONS**

In the following, underline indicates additional text and ~~striketrough~~ indicates deleted text.

#### **Chapter 1. Rules and Regulations of Adult Operations and Programs.**

#### **Article 6.5. Intake, Release and Discharge of Inmates.**

#### **3076. Recall of Commitment Recommendation Circumstances.**

**Text in section 3076 is renumbered 3076(a) and is amended to read:**

(a) The ~~director~~ Secretary, or designee, may recommend at any time to the sentencing court the recall of an inmate's commitment pursuant to Penal Code (PC) section 1170(d), if the inmate is not sentenced to death, for one or more of the following reasons:

**Existing Subsection 3076(a) is deleted:**

~~(a) The inmate is terminally ill and is not condemned or sentenced to life without possibility of parole.~~

**Existing subsections 3076(b) through 3076(d) are renumbered new subsections 3076(a)(1) through 3076(a)(3) and are amended to read:**

~~(b)~~(1) It is evident from the inmate's exceptional behavior that is so extraordinary beyond simply complying with all regulations and procedures during incarceration that they have changed as a person and would be a positive asset to the community.

~~(c)~~(2) Information which was not made available to the court in pronouncing the inmate's sentence is brought to the attention of the ~~director~~ Secretary, who deems the information would have influenced the sentence imposed by the court.

~~(d)~~(3) The ~~director~~ Secretary deems that circumstances have changed to the extent that the inmate's continued incarceration is not in the interest of justice.

**Subsection 3076(b) is adopted to read:**

(b) The Secretary, or designee, may recommend at any time to the sentencing court the recall of an inmate's commitment pursuant to PC section 1170(e), if the inmate is not sentenced to death or to a term of life without the possibility of parole, for one or more of the following reasons:

**New subsections 3076(b)(1) and 3076(b)(2) are adopted to read:**

(1) The inmate is terminally ill with an incurable condition caused by an illness or disease that would produce death within six months, as determined by a physician employed by the California Department of Corrections and Rehabilitation.

(2) The inmate is permanently medically incapacitated with a medical condition, that renders him or her permanently unable to perform activities of basic daily living, and results in the inmate requiring 24-hour total care, including, but not limited to coma, persistent vegetative state, brain death, ventilator dependency, loss of control of muscular or neurological function, and that incapacitation did not exist at the time of the original sentencing. Activities of basic daily living are breathing, eating, bathing, dressing, transferring, elimination, arm use, or physical ambulation.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1170(d), 1170(e) and 5054, Penal Code.

**Section 3076.1 is amended to read:**

**3076.1. Recall of Commitment ~~Recommendation~~ Consideration ~~Criteria~~ Factors for Penal Code Section 1170(d).**

For inmates meeting one or more of the recall eligibility requirements of section 3076(a), the ~~e~~Classification and ~~p~~Parole ~~r~~Representative, shall consider the following ~~criteria~~ factors as may be applicable ~~before~~ when recommending recall of commitment consideration for an inmate:

(a) ~~The inmate is or is not terminally ill or, if diagnosed as having an illness, which results in death, the inmate has more than an estimated six months to live. The inmate's commitment offense.~~

(b) ~~The inmate's commitment offense is for one or more of the following felonies: murder, attempted murder, voluntary manslaughter, mayhem, rape with force or violence, sodomy with force or violence, oral copulation with force or violence, lewd acts on a child under 14 years of age, arson, and/or other felonies punishable by imprisonment for life. Whether the inmate has a history of affiliation with organized criminal activity, including, but not limited to, any known disruptive group, street gang, prison gang, terrorist group, or racketeering enterprise.~~

(c) The inmate is or is not designated as a high notoriety case by the ~~e~~Classification ~~s~~Staff ~~r~~Representative, or their placement has or has not been ordered by the ~~d~~Departmental ~~r~~Revue ~~b~~Board because of an unusual threat to the safety of persons or public interest in the inmate's case.

**Existing subsection 3076.1(d) is deleted:**

~~(d) The court was aware of the inmate's imminent terminal status at the time of sentencing.~~

**Existing subsection 3076.1(e) is renumbered subsection 3076.1(d) and is amended to read:**

~~(e)~~(d) Whether the inmate's prior criminal history reflects includes a pattern of convictions for violent acts against persons pursuant to Penal Code (PC) section 667.5(c) or PC section 1192.7(c), or registerable offenses pursuant to PC section 290.

**Existing subsection 3076.1(f) is deleted:**

~~(f) The inmate has no prior criminal convictions preceding the commitment offense.~~

**Existing subsection 3076.1(g) is renumbered subsection 3076.1(e) and is amended to read:**

~~(g)~~(e) Whether there exists a documented victim or next of kin of the inmate's commitment offense in the community who would suffer fear from the release of the inmate back into the community.

**Existing subsection 3076.1(h) is renumbered subsection 3076.1(f) and is amended to read:**

~~(h)~~(f) Whether the inmate's documented institutional behavior reflects an ongoing, a history serious pattern of offenses involving force, violence, assault, arson, or predatory sexual behavior.

**Existing subsection 3076.1(i) is deleted.**

~~(i) The inmate is terminally ill and there are or are not verifiable community resources appropriate, sufficient, and immediately available to provide support and sustenance and to meet the inmate's medical and/or psychological needs upon release.~~

**Subsection 3076.1(g) is adopted to read:**

(g) Whether the inmate has committed any other criminal acts, either prior to or during the current period of incarceration, that indicate he or she would be a danger to the public if released.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1170(d), 3043 and 5054, Penal Code.

**Section 3076.2 is amended to read:**

**3076.2. Recall of Commitment Processing for Penal Code Section 1170(d).**

**Existing subsection 3076.2(a) is deleted:**

~~(a) Recall of Commitment Processing for Terminally Ill Inmates.~~

**Existing subsection 3076.2(a)(1) is renumbered subsection 3076.2(a) and is amended to read:**

~~(a)(4) Requests for a determination consideration that an inmate is terminally ill and that they be considered for recall of commitment which are initiated by the facility at any time or by the sentencing court more than 120 days after the date of the inmate's commitment shall be referred to the inmate's caseworker, who shall inform the inmate's treating physician or the facility's chief medical officer of the request~~ Classification and Parole Representative (C&PR).

**Existing subsection 3076.2(a)(2) is renumbered subsection 3076.2(b) and is amended to read:**

~~(2)(b) For the purpose of this regulation, the facility's chief medical officer must also concur with the treating physician's prognosis of the inmate. Upon receipt of the request, the C&PR shall consider the factors listed in section 3076.1 and review the inmate's central file to determine if the inmate is sentenced to death.~~

**Existing subsection 3076.2(a)(3) is renumbered subsection 3076.1(b)(1) and is amended to read:**

~~(3)(1) Within three working days of the caseworker advising the chief medical officer or the inmate's treating physician of the request or of a medical staff member's discovery of a medical condition appropriate for eligibility review, the chief medical officer shall determine if the inmate is terminally ill. This determination shall be documented on a CDC Form 128-C, Chrono-Medical Psych-Dental, which shall include a description of the inmate's illness, physical condition, estimated life expectancy and desire to participate in a recall consideration, and which shall be submitted to the classification and parole representative. If the inmate is sentenced to death, the C&PR shall document the reason for the ineligibility on a CDC Form 128-B (Rev. 04/74), General Chrono. The original CDC Form 128-B shall be filed in the inmate's central file and a copy, excluding any confidential material as defined in section 3321, sent to the inmate. A formal, written response shall be provided to the sentencing court or the Secretary, including the reason the inmate is not eligible for Penal Code (PC) section 1170(d) recall.~~

**Existing subsection 3076.2(a)(4) is renumbered new subsection 3076.2(b)(2) and is amended to read:**

~~(4)(2) The classification and parole representative shall review the report and the inmate's central file and consider the criteria listed in section 3076.1 before recommending recall of commitment consideration for the inmate. If the inmate is not sentenced to death, the C&PR shall submit the request to the inmate's caseworker. The inmate's caseworker shall have five working days to prepare an evaluation report, noting the inmate's case factors as listed in section 3076.1, and include the following information and attachments:~~

**New subsections 3076.2(b)(2)(A) through 3076.2(b)(2)(I) are adopted to read:**

(A) The inmate's cumulative case summary including, but not limited to the following information:

1. Inmate's name and CDC number.
2. Current commitment offense, brief description of the crime, and sentence.
3. County of commitment.
4. Prior juvenile and adult criminal history.
5. Active or potential holds, warrants, detainers.
6. Institutional adjustment, including rules violation reports, counseling chronos, pending disciplinary actions, gang/disruptive group information, placement score, current housing assignment, work and education assignments, and participation in self-help activities.
7. Mental health and developmental disability status.

(B) A list of any victim notification or other special notification requirements.

(C) The inmate's post-release plan.

(D) Abstract of Judgment for the inmate's current commitment offense.

(E) Probation Officer's Report for the inmate's current commitment offense.

(F) Institutional Staff Recommendation Summary.

(G) Legal Status Summary.

(H) CDC Form 112 (Rev. 09/83), Chronological History.

(I) The inmate's most recent Board of Parole Hearings Parole Consideration Report with the Lifer Parole Hearing Decision Face Sheet containing the Board of Parole Hearings' disposition (applies only to inmates who are sentenced to an indeterminate term).

**Existing subsection 3076.2(a)(5) is renumbered new subsection 3076.2(c) and is amended to read:**

~~(5)(c) If the classification and parole representative recommends against further recall consideration, the reasons shall be documented on a CDC Form 128-B, Chrono-General (Rev. 4/74), which shall be countersigned by the warden or chief deputy warden within three working days of receipt of the CDC Form 128-C. The original CDC Form 128-B shall be filed in the inmate's central file and a copy, excluding any confidential material as defined in section 3321, sent to the inmate. The C&PR shall review and forward the evaluation report to the warden or chief deputy warden within three working days.~~

**Existing subsection 3076.2(a)(6) is renumbered new subsection 3076.2(d) and is amended to read:**

~~(6)(d) If the classification and parole representative determines that the case warrants recall consideration, the CDC Form 128-C shall be submitted to the inmate's caseworker, who shall investigate and evaluate the inmate's suitability for recommendation of recall and document their evaluation in a report, with the following attachments:~~

~~(A) The CDC Form 128-C.~~

~~(B) The inmate's cumulative case summary.~~

~~(C) A list of any victim notification or other special notification requirements.~~

The warden or chief deputy warden shall review and sign the evaluation report and ensure it is forwarded to California Department of Corrections and Rehabilitation headquarters within three working days.

**Existing subsection 3076.2(a)(7) is renumbered new subsection 3076.2(e) and is amended to read:**

~~(7)(c) The institution's evaluation and recommendation for a Penal Code section 1170(d) recall of a terminally ill inmate, if in favor of recall or equivocal, or in all cases if the evaluation was originally requested by the sentencing judge or if the inmate's term of imprisonment is under the jurisdiction of the Board of Prison Terms pursuant to Penal Code section 1170.2, shall be signed by the warden or chief deputy warden and forwarded within twelve working days from the date of the CDC Form 128-C to department headquarters, and if the inmate's term of imprisonment is under the jurisdiction of the Board of Prison Terms pursuant to Penal Code section 1170.2, to the Board of Prison Terms. The evaluation report for a PC section 1170(d) recall shall be referred to the Secretary, or designee, for review and consideration.~~

**New subsections 3076.2(e)(1) through 3076.2(h) are adopted to read:**

(1) If a positive recommendation for recall is made, and the inmate is sentenced to a determinate term, the Secretary, or designee's, recommendation shall be referred directly to the sentencing court.

(2) If the inmate is sentenced to an indeterminate term, the Secretary or designee's recommendation, whether positive or negative, shall be referred to the Board of Parole Hearings for review and consideration.

(f) When the court requests a post-sentence report within 120 days of the inmate's sentencing, the inmate's caseworker shall evaluate all available information, and assess the inmate's potential for completing probation or other alternate sentencing, and the threat posed to the community if the inmate fails to realize that potential. The inmate's caseworker shall complete an evaluation report, as described in subsection 3076.2(b)(2), and forward the report to the C&PR within five working days.

(g) The C&PR shall have three working days to review the evaluation report and forward it to the warden or chief deputy warden.

(h) The warden or chief deputy warden shall review and sign the evaluation report and submit it directly to the sentencing court within three working days.

**Existing subsections 3076.2(b) through 3076.2(b)(5) are deleted.**

~~(b) Recall of Commitment Processing for Non Terminally Ill Inmates~~

~~(b)(1) Requests for consideration for recall of commitment which are initiated by the facility at any time or by the sentencing court more than 120 days after the date of commitment shall be referred to the classification and parole representative via the inmate's caseworker.~~

~~(b)(2) Upon receipt of the request, the classification and parole representative shall consider the criteria listed in section 3076.1 and the inmate's central file before recommending recall of commitment consideration for the inmate.~~

~~(b)(3) If the classification and parole representative recommends against further recall consideration, the reasons shall be documented on a CDC Form 128-B, Chrono-General (Rev. 4/74), which shall be countersigned by the warden or chief deputy warden. The original CDC Form 128-B shall be filed in the inmate's central file and a copy, excluding any confidential material as defined in section 3321, sent to the inmate.~~

~~(b)(4) If the classification and parole representative determines that the inmate's case warrants recall consideration, the classification and parole representative's findings shall be submitted to the inmate's caseworker, who shall investigate and evaluate the inmate's suitability for recommendation of recall and document their evaluation in a report, with the following attachments:~~

~~(b)(4)(A) The inmate's cumulative case summary.~~

~~(b)(4)(B) A list of any victim notification or other special notification requirements.~~

~~(b)(5) The institution's evaluation and recommendation for a Penal Code section 1170(d) recall of the inmate, if in favor of recall or equivocal, or in all cases if the evaluation was originally requested by the sentencing judge or if the inmate's term of imprisonment is under the jurisdiction of the Board of Prison Terms pursuant to Penal Code section 1170.2, shall be signed by the warden or chief deputy warden and forwarded to department headquarters, and if the inmate's term of imprisonment is under the jurisdiction of the Board of Prison Terms pursuant to Penal Code section 1170.2, to the Board of Prison Terms.~~

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1170(d), 3043 and 5054, Penal Code.

**New section 3076.3 is adopted to read:**

**3076.3. Recall of Commitment Recommendation Consideration Factors for Penal Code Section 1170(e).**

For inmates meeting one or more of the recall eligibility requirements of section 3076(b), the Classification and Parole Representative (C&PR), shall consider the following factors as may be applicable when recommending recall of commitment consideration for an inmate:

(a) The inmate's commitment offense.

(b) Whether the inmate has a history of affiliation with organized criminal activity, including, but not limited to, any known disruptive group, street gang, prison gang, terrorist group, or racketeering enterprise.

(c) The inmate is or is not designated as a high notoriety case by the Classification Staff Representative, or their placement has or has not been ordered by the Departmental Review Board because of an unusual threat to the safety of persons or public interest in the inmate's case.

(d) Whether the court was aware of the inmate's medical condition at the time of sentencing.

(e) Whether the inmate's prior criminal history includes violent acts against persons pursuant to Penal Code (PC) section 667.5(c) or PC section 1192.7(c), or registerable offense pursuant to PC section 290.

(f) Whether there exists a documented victim or next of kin of the inmate's commitment offense in the community who would suffer fear from the release of the inmate back into the community.

(g) Whether the inmate's documented institutional behavior reflects a history of offenses involving force, violence, assault, arson, or predatory sexual behavior.

(h) Whether there are verifiable community resources appropriate, sufficient, and immediately available to provide support and sustenance and to meet the inmate's medical and/or psychological needs upon release.

(i) Whether the inmate has committed any other criminal acts, either prior to or during the current period of incarceration, that indicates he or she would be a danger to the public if released.

(j) Whether the inmate retains the capacity to commit or to influence others to commit criminal acts that endanger public safety.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1170(e), 3043 and 5054, Penal Code; Martinez v. Board of Parole Hearings (2010) 183 Cal.App.4<sup>th</sup> 578.

**New section 3076.4 is adopted to read:**

**3076.4. Recall of Commitment Processing for Penal Code Section 1170(e).**



A physician employed by the California Department of Corrections and Rehabilitation (CDCR) who determines an inmate meets the eligibility requirements described in Subsection 3076(b), shall initiate the recall process on behalf of the inmate. The inmate or his or her family member or designee may also independently request Penal Code (PC) section 1170(e) recall consideration by contacting the institution's Chief Medical Officer (CMO) or Chief Medical Executive (CME), or the Secretary.

(a) The physician shall document on a CDC Form 128-C (Rev. 01/96), Chrono – Medical-Psychiatric-Dental, the inmate's illness, functional status, including the inmate's abilities or limitations in performing activities of daily living, ambulatory status, the reason why the inmate has six months or less to live or is permanently medically incapacitated, and his or her desire to participate in the recall process.

(b) The CMO or CME, Deputy Medical Executive, and Statewide Chief Medical Executive, California Prison Health Care Services, shall have five working days to review and sign the CDC Form 128-C, approving the physician's prognosis. The signed CDC Form 128-C shall be submitted to the C&PR within three working days following the Statewide Chief Medical Executive's approval.

(1) If the CMO or CME, or the Deputy Medical Executive, or the Statewide Chief Medical Executive do not concur with the physician's prognosis, the recall of commitment process shall be terminated.

(c) The C&PR shall review the CDC Form 128-C and the inmate's central file.

(1) If the inmate is sentenced to death or to life without the possibility of parole, the Classification and Parole Representative (C&PR) shall document the reason for the ineligibility on a CDC Form 128-B (Rev. 04/74), General Chrono, and file the original in the inmate's central file. A copy of the CDC Form 128-B excluding any confidential information, as defined in section 3321, shall be sent to the inmate and the inmate's physician.

(2) If the inmate is not sentenced to death or to life without the possibility of parole, medical staff shall explain the recall of commitment process to the inmate within 48 hours of notification and arrange for the inmate to designate a family member or other outside agent on CDCR Form 7385 (Rev. 09/09), Authorization for Release of Information, which is incorporated by reference. The inmate's designee shall be informed about the recall of commitment process and the inmate's medical condition. If the inmate is mentally unfit to designate a family member or other outside agent, medical staff shall contact the inmate's emergency contact listed on the CDC Form 127 (Rev. 06/01), Notification in Case of Death, Serious Injury, or Serious Illness, which is incorporated by reference, and advise them of the recall process.

(d) The C&PR shall submit the CDC Form 128-C to the inmate's caseworker. The inmate's caseworker shall have five working days to prepare an evaluation report noting the inmate's case factors as listed in section 3076.3, which consists of the following information and attachments:

(1) CDC Form 128-C.

(2) The inmate's cumulative case summary, including, but not limited to the following information:

(A) Inmate's name and CDC number.

(B) Current commitment offense, brief description of the crime, and sentence.

(C) County of commitment.

(D) Prior juvenile and adult criminal history.

(E) Active or potential holds, warrants, detainers.

(F) Institutional adjustment, including rules violation reports, counseling chronos, pending disciplinary actions, gang/disruptive group information, placement score, current housing assignment, work and education assignments, and participation in self-help activities.

(G) Mental health and developmental disability status.

(3) A list of any victim notification or other special notification or registration requirements.

(4) The inmate's post-release plan.

(5) CDCR Form 7385 (Rev. 09/09), Authorization for Release of Information.

(6) CDCR Form 3038 (12/10) Notification to Inmate/Inmate Designee - Recall and Re-sentencing Procedure, which is incorporated by reference.

(7) CDCR Form 3039 (12/10), Waiver of Defendant's Personal Presence at the Recall and Re-sentencing Hearing, which is incorporated by reference.

(8) Abstract of Judgment for the inmate's current commitment offense.

(9) Probation Officer's Report for the inmate's current commitment offense.

(10) Institutional Staff Recommendation Summary.

(11) Legal Status Summary.

(12) CDC Form 112 (Rev. 09/83) Chronological History.

(13) The inmate's most recent Board of Parole Hearings Parole Consideration Report with the Lifer Parole Hearing Decision Face Sheet containing the Board of Parole

Hearings' disposition (applies only to inmates who are sentenced to an indeterminate term).

(e) The C&PR shall review and forward the evaluation report to the warden or chief deputy warden within three working days.

(f) The warden or chief deputy warden shall review and sign the evaluation report and ensure it is forwarded to CDCR headquarters within three working days.

(g) The evaluation report for a PC section 1170(e) recall shall be referred to the Secretary, or designee, for review and consideration.

(1) If a positive recommendation for recall is made, and the inmate is sentenced to a determinate term, the recommendation shall be referred directly to the sentencing court and shall include one or more medical evaluations, the findings of which must determine the inmate meets the criteria set forth in PC section 1170(e)(2), and a post-release plan.

(2) If the inmate is sentenced to an indeterminate term, the Secretary or designee's recommendation, whether positive or negative, shall be referred to the Board of Parole Hearings for review and consideration.

(h) Pursuant to PC section 1170(e)(9), if the sentencing court grants the recall and resentencing application, the inmate shall be released by the department within 48 hours of receipt of the court's order, unless a longer time period is agreed to by the inmate or ordered by the court. If the inmate has agreed to waive the 48-hour release requirement, the department shall request the sentencing court include in its order that the inmate shall be released within 30 calendar days to allow for the coordination of his or her housing and medical needs in the community to a location where access to care is available.

(i) If the Division of Adult Parole Operations (DAPO) is coordinating the inmate's placement within the community, the C&PR shall provide a copy of the release order to DAPO upon receipt from the sentencing court.

(j) At the time of release, medical staff shall ensure the inmate has each of the following in his or her possession; a discharge medical summary, full medical records, State identification, parole medication, and all property belonging to the inmate. After discharge, any additional records shall be sent to the inmate's forwarding address.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1170(e), 3043 and 5054, Penal Code; Martinez v. Board of Parole Hearings (2010) 183 Cal.App.4<sup>th</sup> 578.

**Section 3076.3 is renumbered new section 3076.5 and is amended to read:**

#### **3076.5. Victim Notification for Recall of Commitment Recommendations.**

When informed by department headquarters or the Board of Parole Hearings that an inmate's commitment has been recommended for recall to the sentencing court, the

~~inmate's e~~Classification and ~~p~~Parole ~~r~~Representative shall notify any victim of a crime committed by the inmate, or the victim's next of kin ~~if the victim has died~~, provided that the victim or the victim's next of kin has formally requested notice about the status of the inmate in prison, including, but not limited to, notification of release, escape, or death, or of any hearing to review or consider the release or parole suitability or the setting of a parole date for the inmate, in writing; either by submitting a signed letter or a completed CDCR Form 1707 (Rev. 04/08), Request For Victim Services, which is incorporated by reference, to the Office of Victim and Survivor Rights and Services, and the requesting party has kept the department or the Board of Prison Terms Parole Hearings apprised of their current mailing address. The notification shall include the name and address of the court that will consider the recall of the inmate's commitment.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1170(d), 1170(e), 3043 through 3043.3 and 5054, Penal Code.